COURT NO.2

THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Appeal from Order No. 369 of 2002

Regional Manager.
U.P.F.C. Dehradun. ….. **Appellant.**

Versus

Khursheed Alam and
others. ….... **Respondents.**

Coram : Hon'ble P.C. Verma, J.
Hon'ble B.S. Verma, J.

This appeal has been preferred against the order dated 12.09.2002 passed by Civil Judge (Senior Division) F.T.C. VI, Dehradun **(in short the Judge)** in regular suit No.660 of 2002 Khursheed Alam V/s Regional Manager, U.P.F.C., whereby the learned Judge allowed the application of the plaintiff for ad interim injunction thereby gave a right to the defendant-appellant to recover the loan amount advanced to the Right Steel and Alloy Pvt. Ltd. from the assets of the Company first and in case the same does not stand satisfied, then from the property of new Director of the company and thereafter from the private property of the plaintiffs. Aggrieved, the defendant U.P.F.C. has come up in appeal with a prayer to set aside the impugned order on the ground that the order is not legally maintainable under the provisions of Section 34 of the Specific Reliefs Act and the plaintiff-respondents have no cause of action to bring a suit against the appellant, therefore, there was no question of relief under Order 39, Rules 1 and 2 of the C.P.C. arose in favour of the plaintiffs.

Brief facts of the case are that the plaintiff-respondents filed a suit for permanent injunction against the defendant-appellant. Along with the suit, application for temporary injunction was also moved. It has been alleged that the Right Steel and Alloy (P) Ltd. is

a registered company registered under the Companies Act. Electric connection was sanctioned to the company to start is production. The said Company took a loan worth Rs. 88,00,000/-. The company has fallen sick. Plaintiffs and two others were the Directors of the Company. One third person Nizam Uddin came forward to run the Company, therefore, vide resolution dated 10-9-1997, the plaintiffs and Sahid-u-Zumma and Ashik Ali tendered their resignation and Nizamuddin etc. were appointed as Directors. Information was sent to the defendant-appellant and other concerned Authorities. The defendant-appellant accepted the resolution and directed the Deputy Manager (Law) of the defendant to conduct further proceedings and the incoming Director was directed to furnish personal security etc. According to the plaintiffs after 10-9-1997, they have no concern with the said Company. Later-on, due to irregularities and negligence on the part of incoming Director, he was removed from his office. The defendant is said to be intending to recover the loan advanced to the plaintiffs, therefore, the suit has been filed along with application for ad interim injunction.

The defendant-appellant contested the application for temporary injunction on the ground that the plaintiffs have given personal security, therefore, the appellant is at liberty to recover the loan advanced to them.

After considering the entire material before it, the learned Trial Court found that prima facie case in favour of the plaintiffs is made out; that in case, the ad interim injunction is refused, the plaintiffs will suffer irreparable loss and that the balance of convenience lies in their favour.

We have heard learned counsel for the appellant, Mr. Naresh Pant as well as learned counsel for the respondent-plaintiffs, Mr. Sharad Sharma and have carefully gone through the entire material on record.

The learned counsel for the appellant has submitted that there is sufficient evidence on record to show that no cause of action arose in favour of the plaintiff-respondents to bring the suit for permanent injunction against the appellant-U.P.F.C., therefore, the application for ad interim injunction 6-C2 moved by the respondents was not maintainable. We have gone through the entire record.

In the present case, we find that it is not disputed that M/s Right Steel and Alloys (P) Ltd. is a registered company and initially six persons including the plaintiffs and others were the Directors. It is the admitted fact that loan was advanced to the said Company by the appellant. It is also not disputed that according to resolution dated 10.9.1997, the former Directors of the said Company tendered their resignation and the management of the company was taken over by new comers. On the record, there are several documents filed by the plaintiffs, which are paper nos. 7-C/14, 7-C/15, 7-C/16 and many others, which are sufficient to prima facie hold that the appellant was fully aware of the new developments, which came in for the running of the said Company. Form a perusal of paper no. 7-C/28 issued by the appellant in which the Incoming Director was directed to perform necessary duties. Many other papers are on the record to show that voluminous correspondence has taken place between the appellant and the new management of the company including the matter of furnishing additional guarantee by the new Director. From the perusal of all the papers on record, it comes out that the new Directors have undertaken the liabilities of the company. Therefore, we of the opinion that a prima facie case has been made out in favour of the plaintiff-respondents for issue of ad interim injunction order. The learned Judge has passed the impugned order so as to meet the ends of justice in the circumstances of the present case. The learned counsel for the appellant could not show to us as to how prima facie case is not made or as to how the impugned order is not legally maintainable at this stage. In our opinion, all the three ingredients for grant of ad interim injunction appear to have been made out in

the present case. From the record, we find nothing so as to warrant interference with the impugned order dated 12.9.2002 passed by the Civil Judge (Sr.Div), Fast Truck Court VI, Dehradun.

The learned counsel for the appellant has, however, submitted that a direction may be issued to the trial court to expedite disposal of the suit. The prayer is innocuous. In the circumstances of the case, it is a fit case in which direction for expeditious disposal of the suit may be given to the trial court.

In the result, the appeal fails on merits. The court below is directed to dispose of the ***Original Suit No. 606 of 2002, Khursheed Alam and others Vs. Regional Manager, U.P.F.C.,*** expeditiously within four months from the date of this order. Till then, both the parties shall maintain status-quo.

With the aforesaid observations, the appeal is dismissed. The impugned order is upheld. No order as to costs.

(B.S. Verma, J.) **(P.C. Verma, J.)**

28-08-2004
RCP